

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

January 19, 2012 Hearing

Agenda Item 2

**SUBJECT:** SCAP III, LLC Property Amendment - (PA2011-196)  
514 E. Ocean Front (aka 101-107 Palm Street)

- General Plan Amendment No. GP2011-009
- Code Amendment No. CA2011-012
- Local Coastal Plan Amendment No. LC2011-005

**APPLICANT:** Terry A. Jones

**PLANNER:** Jaime Murillo, Associate Planner  
(949) 644-3209, [jmurillo@newportbeachca.gov](mailto:jmurillo@newportbeachca.gov)

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**PROJECT SUMMARY**

The property owner is seeking to continue the existing nonconforming commercial uses of the subject property by requesting the following amendments:

- 1) General Plan Land Use designation from Two-Unit Residential (RT) to Mixed-Use Vertical (MU-V);
- 2) Coastal Land Use Plan designation from Two-Unit Residential (RT-E) to Mixed-Use Vertical (MU-V); and
- 3) Zoning designation from Two-Unit Residential (R-2) to the Mixed-Use Vertical (MU-V).

No new land use or development is proposed at this time.

**RECOMMENDATION**

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ (Attachment No. PC 1) recommending the City Council:
  - Approve General Plan Amendment No. GP2011-009; and
  - Approve Local Coastal Plan Amendment No. LC2011-005; and
  - Approve Code Amendment No. CA2011-012.

### VICINITY MAP



### GENERAL PLAN



### ZONING



LOCATION	GENERAL PLAN	COASTAL LAND USE PLAN	ZONING
ON-SITE (Existing)	Two-Unit Residential (RT)	Two-Unit Residential (RT-E)	Two-Unit Residential (R-2)
ON-SITE (Proposed)	Mixed-Use Vertical (MU-V)	Mixed-Use Vertical (MU-V)	Mixed-Use Vertical (MU-V)
NORTH	MU-V	MU-V	MU-V
SOUTH	Public Facilities (PF)	Public Facilities (PF)	Public Facilities (PF)
EAST	Multiple-Unit Residential (RM)	Multiple Unit Residential (RM-E)	Multi-Unit Residential (RM)
WEST	RT	RT-E	R-2

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## **INTRODUCTION**

### **Project Setting**

The subject property is located on the northwest corner of the intersection of East Ocean Front (boardwalk) and Palm Street on the Balboa Peninsula. The property is approximately 5,415 square feet in area and consists of two legal lots. It is designated by the Land Use Element of the General Plan, Coastal Land Use Plan, and the Zoning Code for Two-Unit Residential use. The property is currently developed with a mixed-use building with commercial use on the ground floor and five residential units on the second floor. The commercial uses are nonconforming with the General Plan, Coastal Land Use Plan and the Zoning Code.

Surrounding land uses include a vacant restaurant building across the alley to the north, two-unit residential uses to the west, the Balboa Pier parking lot to the south, and a 24-unit condominium complex across Palm Street to the east.

### **Background**

The existing two-story, mixed-use building was permitted in 1948 with four commercial tenant spaces on the ground floor and five residential apartments on the second floor. Throughout the years, the commercial suites have been occupied by a laundromat and various food service and retail uses. Current commercial uses include a bicycle rental and ice cream shop, a cigar shop, an office use, and a vacant suite.

In 2003, Modification Permit No. MD2003-017 was approved authorizing façade improvements and the addition of a third floor deck. The façade of the building was significantly enhanced with the addition of new roof elements, windows, window frames, pot shelves, and new exterior finish and paint. Photographs of the building are included as Attachment No. PC3.

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"). As a result, the land use designation of the property was changed from Retail and Service Commercial with an allowance for residential above the first floor to Two-Unit Residential.

On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001, making the Coastal Land Use Plan consistent with the General Plan Update. The Coastal Land Use Plan designation for the property was changed from General Commercial (CG-C) with an allowance for residential above the first floor to Two-Unit Residential.

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of

nonconformity could not be made until Coastal Commission approval of the City's Local Coastal Plan (LCP) amendments, which occurred on July 14, 2009, and the subsequent Zoning Code Update which was effective November 25, 2010.

On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The result of that action rendered several properties nonconforming, including existing commercial uses located within residential districts, which in accordance with Ordinance No. 2008-05 became subject to abatement.

The City sent letters to all known uses that are subject to abatement. Staff has met and continues to meet with many of the owners of property that are subject to abatement. Staff has explained to those owners the options available to them to remedy their individual situations. Those remedies may include conversion of use or development to a residential use; request for extension of the abatement period; and/or request to amend the General Plan, Coastal Land Use Plan and Zoning Code to allow the continuation of the commercial use. In the case of the subject application, the owner chose to pursue amendments to change the land use designations of their property from residential to mixed-use.

### Project Description

The subject application does not include a specific project for development at this time. The proposed land use changes, as shown below, would allow the retention of the existing land use and allow for future development in accordance with the standards of the proposed zoning district.

	<b>Existing</b>	<b>Proposed</b>
<b>General Plan</b>	Two-Unit Residential (RT)	Mixed-Use Vertical (MU-V)
<b>Coastal Land Use Plan</b>	Two-Unit Residential (RT-E)	Mixed-Use Vertical (MU-V)
<b>Zoning District</b>	Two-Unit Residential (R-2)	Mixed-Use Vertical (MU-V)

## **DISCUSSION**

### Analysis

Amendments to the General Plan Land Use Plan, Coastal Land Use Plan, and Zoning Code are legislative acts. Neither City nor State Planning Law set forth required findings for approval or denial of such amendments. However, when making a recommendation to the City Council, the Planning Commission should consider applicable policies and development standards to ensure internal consistency.

### *General Plan*

The applicant requests to amend the General Plan to change the subject property from a RT to a MU-V land use designation. The MU-V designation is intended to provide for

the development of properties for mixed-use structures that vertically integrate housing with retail uses including retail, office, restaurant, and similar nonresidential uses. MU-V designated sites also may be developed exclusively with commercial uses in accordance with the CN, CC, CG, or CO-G designations. The following floor area to land ratios are allowed under the MU-V designation:

Mixed-Use Buildings: floor area to land ratio of 1.50; where a minimum floor area to land ratio of 0.35 and maximum of 0.5 shall be used for nonresidential purposes and maximum of 1.0 for residential.

Nonresidential Buildings: floor area to land area ratio of 0.75 maximum.

The property is located in the Balboa Village area of Newport Beach. In considering the proposed General Plan Amendment, the Planning Commission should consider the following Land Use Element policies:

***Policy LU 3.3 - Opportunities for Change***

*Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors...*

- ***Balboa Peninsula***: more efficient patterns of use that consolidate the Peninsula's visitor-serving and mixed uses within the core commercial districts; encourage marine-related uses especially along the bay front; integrate residential with retail and visitor-serving uses in Lido Village, McFadden Square, Balboa Village, and along portions of the Harbor frontage; re-use interior parcels in Cannery Village for residential and limited mixed-use and live/work buildings; and redevelop underperforming properties outside of the core commercial districts along the Balboa Boulevard corridor for residential. Infill development shall be designed and sited to preserve the historical and architectural fabric of these districts.

***Policy LU6.8.1 – Urban Form***

*Establish development patterns that promote the reinforcement of Balboa Peninsula's pedestrian scale and urban form as a series of distinct centers/nodes and connecting corridors.*

***Policy LU6.8.6 – Historic Character***

*Preserve the historic character of Balboa Peninsula's districts by offering incentives for the preservation of historic buildings and requiring new development to be compatible with scale, mass, and materials of existing structures, while allowing opportunities for architectural diversity.*

The subject property was re-designated with the adoption of the General Plan Update for residential use with the intent to strengthen the viability of other commercial uses around the existing commercial centers along Balboa Boulevard. However, the property is located on Palm Street, which has historically and is currently developed with

commercial and mixed-use structures. Palm Street also serves as the primary entry into the Balboa Pier parking lot. Maintaining the property for mixed-use implements the City's goals and policies as follows:

- Although the existing density and intensity of the building exceeds what is currently allowed under the MU-V designation, the design, scale, and massing of the building exhibits recommended design concepts of the Balboa Village Design Guidelines and is representative of the types of buildings that were historically constructed in the area. By allowing for the continued use of this traditional mixed-use structure, the historical and architectural fabric of the area is preserved and supports the architectural diversity of the area.
- The design and scale of the building implements the City's goal for pedestrian-oriented architecture and streetscapes in that the building fronts directly on Palm Street and the boardwalk, and includes articulation and modulation of the street-facing elevations to promote visual interest and character.
- The residential uses have been seamlessly integrated into the architectural design of the building and include common open space for the residential tenants in the form of a courtyard and roof deck.
- Maintaining the ground floor for commercial uses supports the preservation of important visitor-serving uses that benefit the area such as the bicycle rentals and food services.
- Given that Palm Street is the primary entrance and connecting corridor from Balboa Boulevard to the Balboa Pier parking lot, the existing mixed-use building helps to activate the streetscape of the corridor and also serves as a transition and buffer from the pedestrian and traffic activity to the neighboring residential dwelling units to the west.

### *Coastal Land Use Plan*

The subject property is located in the coastal zone and therefore, is subject to the applicable goals, objective and policies of the Coastal Land Use Plan. This Plan was created to govern the use of land and water in the coastal zone within the City of Newport Beach and is in accordance with the California Coastal Act of 1976. The subject property has a land use designation of Two-Unit Residential (RT-E). The applicant is requesting to change the current land use to a mixed-use designation. The subject property does not contain any sensitive coastal resources as it is presently improved with commercial buildings nor located where public access easements would be required. The Coastal Act prioritizes land uses, and visitor-serving uses are a higher priority land use than residential use. The continuation of commercial uses and future redevelopment on the subject property as permitted by the MU-V designation will not conflict with the policies of the Coastal Act.

### *Zoning Code*

The stated purpose and intent of the Zoning Code is to carry out the policies of the City of Newport Beach General Plan. Consistency between the General Plan and zoning designation is critical to ensure orderly development and enforcement. Therefore, concurrent with the General Plan and Coastal Land Use Plan land use changes, the applicant is requesting to change the zoning designation from RT to MU-V.

Under the existing RT designation, the subject property could be developed with a total of four residential dwelling units (two units per underlying legal lot). A total of eight parking spaces would be required. The requested MU-V zoning district is intended to be provided for the development of mixed-use commercial and residential projects.

The main purpose of the requested amendment is to allow the continued use of the existing mixed-use development as was originally approved in 1948. If the amendments are approved, the existing mixed-use building would be consistent with the allowed uses of the proposed MU-V district and the existing commercial uses would be allowed to remain without abatement. However, the existing building would remain nonconforming to the development standards of the proposed MU-V zoning district, including standards related to density, floor area, setbacks, and parking. Future new development would require conformance with applicable development and parking standards.

For reference, the tables below provide a comparison between the existing mixed-use development and how the property could be developed under the proposed MU-V zoning designation.

<b>Table 1- Proposed MU-V Development Standards</b>				
	<b>Minimum Intensity/Density</b>	<b>Maximum Intensity/Density</b>	<b>Minimum Parking</b>	<b>Maximum Parking</b>
<b>Allowed Mixed-Use</b>				
Non-Residential	1,895.25 sf (0.35 FAR)	2,707.5 sf (0.50 FAR)	8 (1,895.25 sf @ 1/250)	11 (1/250)
Residential	No min. FAR 2 units (20du/ac)	5,415 sf (1.0 FAR) 3 units (26.7 du/ac)	4 covered spaces and 1 guest space	6 covered spaces and 1 guest space
<b>Total</b>	<b>7,310.25 sf (1.35 FAR) w/2 units</b>	<b>8,122.5 sf (1.5 FAR) w/3 units</b>	<b>13 spaces</b>	<b>18 spaces</b>
<b>Allowed Commercial Only</b>	<b>N/A</b>	<b>4,061 sf (0.75 FAR)</b>	<b>N/A</b>	<b>16 spaces (1/250 sf)</b>

<b>Table 2- Existing Mixed-Use Development</b>		
<b>Existing Mixed-Use</b>	<b>Existing Intensity/Density</b>	<b>Provided Parking</b>
Non-Residential	Approx. 5,375 sf (.99 FAR)	0 spaces
Residential	Approx. 4,343 sf (.80 FAR) 5 units	0 spaces
<b>Total</b>	<b>Approx. 9,718 sf (1.79 FAR) w/ 5 units</b>	<b>0 spaces</b>



*Charter Section 423 (Measure S) Analysis*

Charter Section 423 requires voter approval of any major General Plan amendment to the General Plan. A major General Plan amendment is one that increases allowed density or intensity by 40,000 square feet of non-residential floor area, or increases traffic by more than 100 peak hour vehicle trips, or increases residential dwelling units by 100 units. These thresholds apply to the total of increases resulting from the amendment itself, plus 80 percent of the increases resulting from prior amendments affecting the same neighborhood (defined as a Statistical Area as shown in the General Plan Land Use Element) and adopted within the preceding ten years.

The project site for which the General Plan amendment is proposed is located within Statistical Area D3 of the General Plan Land Use Element, and would result in an increase of 4,061 square feet of non-residential floor area. Based on the trip generation rates contained in the Council Policy A-18 (blended commercial rate), the proposed project is forecast to generate an additional 10 a.m. peak hour trips and 14 p.m. peak hour trips.

There has been one prior amendment (GP2010-007) approved within Statistical Area D3 since the adoption of the 2006 General Plan, which was adopted on September 14, 2010. This amendment involved land use changes for the Balboa Fun Zone/Newport Harbor Nautical Museum site from Private Institutions to Visitor-Serving Commercial, and also involved land use changes for the Balboa Inn site from Mixed-use Vertical to Visitor-Serving Commercial. This amendment did not involve any increases in density or intensity, but did result in an increase in peak hour trips. Table 3 below shows the floor area and peak hour trips analysis for the prior amendment and the proposed project:

<b>Table 3: Charter Section 423 Analysis Summary Statistical Area D3</b>				
	<b>Allowed Floor Area</b>	<b>A.M. Peak Hour Trips</b>	<b>P.M. Peak Hour Trips</b>	<b>Increase in Allowed Dwelling Units</b>
<b>Prior Amendment GP2010-007</b>	0 (80%)	36.14 (80%)	62.26 (80%)	-9 (80%)
<b>Proposed GP2011-009</b>	4,061 sq. ft.	10.42	14.09	-1
<b>TOTAL</b>	<b>4,061 sq. ft.</b>	<b>46.56</b>	<b>76.35</b>	<b>-10</b>

As indicated in the table above, the proposed GPA does not result in an increase in allowed dwelling units, does not exceed the non-residential floor area threshold, and does not exceed the a.m. or p.m. peak hour vehicle trips threshold. Therefore, none of the thresholds that require a vote pursuant to Charter Section 423 are exceeded. If the proposed General Plan amendment is approved by City Council, the amendment will



become a prior amendment and 80 percent of the increases will be tracked for ten years for any proposed future amendments. A more detailed analysis is attached (Attachment No. PC 4).

### *SB18 Tribal Consultation Guidelines*

Pursuant to Section 65352.3 of the California Government Code, a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission (NAHC) each time it considers a proposal to adopt or amend the General Plan. The appropriate tribe contacts supplied by the NAHC were provided notice on November 3, 2011, to allow tribe contacts an opportunity to request consultation. The City has mailed out invitations for consultation to each of the tribe contacts and had not yet received any responses although the review period remains open until February 1, 2012. It should be noted that staff has consulted with one tribe contact on another project, during which various projects the City is processing were discussed, including this amendment. The tribe contact indicated he did not have any concerns with this amendment so long as future redevelopment of the site is subject to development review and complies with CEQA.

The Planning Commission may recommend the proposed project to City Council at this time. However, the City Council may not act on the proposed amendments until the tribe review period is concluded. Given that the sites are presently developed and that the no development is proposed at this time, staff does not anticipate any conflicts or need for monitoring by the tribes. If any comments are received from the tribes, they will be forwarded to the City Council for consideration.

### Environmental Review

The proposed amendments are exempt since they do not entail any significant alteration to the subject property and will bring the General Plan Land Use, Coastal Land Use, and Zoning District designations into consistency with the present use. The sites are presently developed and no new development is proposed at this time, which is categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities).

### Summary

The applicant has requested the amendment to allow retention of the existing mixed-use building and uses. The building was constructed in 1948 and significantly renovated in 2003. The uses have been in existence for nearly sixty-three years and its abatement at this time seems contrary to the General Plan Policies that promote revitalization of the area. Continuation of these uses and future development consistent with the MU-V designation does not appear to conflict with the General Plan or Coastal Land Use Plan or Coastal Act. Staff does not foresee any adverse environmental impacts with continued use or redevelopment. The approval of the General Plan Amendments to

MU-V designation would not necessitate a vote of the electorate, as required by Section 423 of the City Charter.

### Alternatives

Alternatives to the proposed amendments could include disapproval of the request and retention of the existing General Plan, Coastal Land Use Plan and Zoning designations of Two-Unit Residential. If it is the desire of the Planning Commission to disapprove this request in its entirety, the attached resolution recommending disapproval is provided (Attachment No. PC2). However, such an action would require abatement of the existing nonresidential use in accordance with the provisions of the Zoning Code, Section 20.38.100.

### Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the properties, and was posted at the site a minimum of ten days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Jaime Murillo  
Associate Planner

Submitted by:



Brenda Wisneski  
Deputy Community Development Director

### ATTACHMENTS

- PC 1 Draft Resolution Recommending Approval
- PC 2 Draft Resolution Denying Amendment Request
- PC 3 Photographs of Existing Building
- PC 4 Section 423 Analysis Table

# **Attachment No. PC 1**

Draft Resolution Recommending Approval

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING APPROVAL TO THE CITY COUNCIL AMENDING THE LAND USE ELEMENT OF THE GENERAL PLAN, COASTAL LAND USE PLAN AND THE ZONING CODE TO CHANGE THE LAND USE DESIGNATION FROM TWO-UNIT RESIDENTIAL TO MIXED-USE VERTICAL (MU-V) FOR PROPERTY LOCATED AT 514 E. OCEAN FRONT (PA2011-196)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. In 1948, the City of Newport Beach permitted the construction of the existing mixed-use building located at 514 E. Ocean Front.
2. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"), resulting in the land use designation of the subject property to change from Retail and Service Commercial with an allowance for residential above the first floor to Two-Unit Residential.
3. On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001 making the Coastal Land Use Plan consistent with the General Plan Update. The Coastal Land Use Plan designation for the property was changed from mixed-use to Two-Unit Residential.
4. On January 28, 2008, the City Council adopted an ordinance (Ordinance No. 2008-05) that established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009.
5. On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The result of that action rendered commercial uses located within residential districts nonconforming. In accordance with Ordinance No. 2008-05, mentioned above, those properties are subject to abatement.
6. An application was filed by Terry A Jones with respect to the subject property located at 514 E. Ocean Front, requesting approval of amendments to the General Plan, Coastal Land Use Plan and the Zoning Code to change the land use from Two-Unit Residential to Mixed-Use Vertical.

7. The requested change of the General Plan designation is from Two-Unit Residential (RT) to Mixed-Use Vertical (MU-V).
8. The requested change of the Zoning District designation is Two-Unit Residential (R-2) to Mixed-Use Vertical (MU-V).
9. The subject property is located within the coastal zone. The requested change of the Coastal Land Use designation is from Two-Unit Residential (RT-E) to Mixed-Use Vertical (MU-V) and will not become effective until the amendment to the Coastal Land Use Plan is approved by the Coastal Commission.
10. Council Policy A-18 requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required. If a project (separately or cumulatively with other projects over a 10-year span) exceeds any one of the following thresholds, a vote of the electorate would be required if the City Council approves the suggested General Plan Amendment: the project generates more than 100 peak hour trips (AM or PM), adds 40,000 square feet of non-residential floor area, or adds more than 100 dwelling units in a statistical area.
11. This is the second General Plan Amendment that affects Statistical Area D3 since the General Plan update in 2006. There is no increase in the number of dwelling units and the amendment results in 4,061 additional square feet of non-residential floor area. The additional floor area results in an increase of 10 a.m. peak hour trips and an increase 14 p.m. peak hour trips based on the commercial and residential housing trip rates reflected in Council Policy A-18. As none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required.
12. A public hearing was held on January 19, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. The proposed amendments are exempt since they do not entail alteration to the subject property and are essentially bringing the General Plan land use designations, Coastal Land Use Plan designations and Zoning districts to be consistent with the existing use of the buildings and property involved.
3. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate

that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

### SECTION 3. FINDINGS.

1. Amendments to the General Plan and Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. Zoning Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience and the general welfare.
3. The amendments of the Land Use Element of the General Plan and the Coastal Land Use Plan will provide consistency with the proposed code amendment to change the zoning of the subject property from Two-Unit Residential (R-2) to Mixed-Use Vertical (MU-V).
4. The existing building and uses, and future development of the property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan and the Coastal Land Use Plan; and will be consistent with the purpose and intent of the MU-V zoning district of the Newport Beach Municipal Code.

### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby recommends City Council approval of General Plan Amendment No. GP2011-009, and Coastal Land Use Plan Amendment LC2011-005, changing the designation from Two-Unit Residential (RT and RT-E) to Mixed-Use Vertical (MU-V); and recommends approval of the request for Code Amendment No. CA2011-012 changing the zoning designation from Two-Unit Residential (RT) to Mixed-Use Vertical (MU-V), affecting 514 E. Ocean Front, Statistical Area D3, legally described as Lots 15 and 16 in Block 6 of Balboa Tract, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 4, Page 11 of miscellaneous maps, in the Office of the County Recorder in said county.
2. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner related

(directly or indirectly) to City's approval of the proposed SCAP III, LLC Property Amendments (PA2011-196) including, but not limited to, General Plan Amendment No. GP2011-009, Coastal Land Use Plan Amendment LC2011-005, and Code Amendment No. CA2011-012. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**PASSED, APPROVED AND ADOPTED THIS 19th DAY OF JANUARY, 2012.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Michael Toerge, Chairman

BY: \_\_\_\_\_  
Fred Ameri, Secretary



## **Attachment No. PC 2**

Draft Resolution Denying Request

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF NEWPORT BEACH DENYING THE REQUEST TO  
AMEND THE LAND USE ELEMENT OF THE GENERAL PLAN,  
COASTAL LAND USE PLAN AND THE ZONING CODE TO  
CHANGE THE LAND USE DESIGNATION FROM TWO-UNIT  
RESIDENTIAL TO MIXED-USE VERTICAL (MU-V) FOR  
PROPERTY LOCATED AT 514 E. OCEAN FRONT (PA2011-196)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. In 1948, the City of Newport Beach permitted the construction of the existing mixed-use building located at 514 E. Ocean Front.
2. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"), resulting in the land use designation of the subject property to change from Retail and Service Commercial with an allowance for residential above the first floor to Two-Unit Residential.
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4. On January 28, 2008, the City Council adopted an ordinance (Ordinance No. 2008-05) that established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009.
5. On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The result of that action rendered commercial uses located within residential districts nonconforming. In accordance with Ordinance No. 2008-05, mentioned above, those properties are subject to abatement.
6. An application was filed by Terry A Jones with respect to the subject property located at 514 E. Ocean Front, requesting approval of amendments to the General Plan, Coastal Land Use Plan and the Zoning Code to change the land use from Two-Unit Residential to Mixed-Use Vertical.

7. The requested change of the General Plan designation is from Two-Unit Residential (RT) to Mixed-Use Vertical (MU-V).
8. The requested change of the Zoning District designation is Two-Unit Residential (R-2) to Mixed-Use Vertical (MU-V).
9. The subject property is located within the coastal zone. The requested change of the Coastal Land Use designation is from Two-Unit Residential (RT-E) to Mixed-Use Vertical (MU-V).
10. A public hearing was held on January 19, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

## SECTION 3. FINDINGS.

1. Amendments to the General Plan and Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments. The Planning Commission has determined that in this particular case that the current General Plan and Coastal Land Use Plan designations are appropriate and a change is not warranted.
2. Zoning Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience and the general welfare. The Planning Commission has determined that in this particular case, that the current Zoning designation is appropriate and that a change is not necessary for the public necessity and convenience and the general welfare.
3. The existing nonresidential use is not consistent with the goals and policies of the Land Use Element of the General Plan, the Zoning District requirements or the Coastal Land Use Plan; and therefore will be subject to abatement in accordance with Ordinance No. 2008-05.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies the requests for General Plan Amendment No. GP2011-009, and Coastal Land Use Plan Amendment LC2011-005, changing the designation from Two-Unit Residential (RT and RT-E) to Mixed-Use Vertical (MU-V); and denies the request for Code Amendment No. CA2011-012 changing the zoning designation from Two-Unit Residential (RT) to Mixed-Use Vertical (MU-V), affecting 514 E. Ocean Front, Statistical Area D3, legally described as Lots 15 and 16 in Block 6 of Balboa Tract, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 4, Page 11 of miscellaneous maps, in the Office of the County Recorder in said county.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 19th DAY OF JANUARY, 2012.**

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

BY: \_\_\_\_\_  
Michael Toerge, Chairman

BY: \_\_\_\_\_  
Fred Ameri, Secretary

# **Attachment No. PC 3**

Photographs of Existing Building



# **Attachment No. PC 4**

Charter Section 423 Analysis



Address	Description	Current GP	Current density	Current Intensity/floor area	Existing Traffic Land Use Description	Existing AM	Existing PM	Proposed GP	Proposed density	Proposed Intensity/Floor Area	Proposed Traffic Land Use Description	Proposed AM	Proposed PM	AM Change	PM Change	Total du changes	Total square footage changes
PRIOR AMENDMENTS																	
GENERAL PLAN AMENDMENT NO. GP2010-007 - STATISTICAL AREA D3																	
600 E. Bay Ave (600 Edgewater Pl)	33,858-square-foot lot is fully developed with the Fun Zone	PI 1.0	0	33,858	Public, Semi-public, and Institutional (blended rate per Council Policy A-18: 1.5/1000 AM & PM)	50.79	50.79	CV 1.0	0	33,858	Commercial blended rate per Council Policy A-18 (3.0 AM & 4.0 PM trips per 1,000sf)	101.57	135.43	50.79	84.65	0	0
105 Main Street	12,825-square-foot lot is fully developed with a 44-unit hotel - The Balboa Inn	MU-V	7	9618.75	#220 - Apartment (0.51AM/0.62PM trips per unit) & Commercial blended rate per Council Policy A-18 (3.0 AM & 4.0 PM trips per 1,000sf)	32.43	42.82	CV 0.75	0	9618.75	Commercial blended rate per Council Policy A-18 (3.0 AM & 4.0 PM trips per 1,000sf)	28.86	38.48	-3.57	-4.34	-7	0
707 E. Ocean Front	7,532-square-foot lot is fully developed with a 44-unit hotel - The Balboa Inn	MU-V	4	5649	#220 - Apartment (0.51AM/0.62PM trips per unit) & Commercial blended rate per Council Policy A-18 (3.0 AM & 4.0 PM trips per 1,000sf)	18.99	25.08	CV 0.75	0	5649	Commercial blended rate per Council Policy A-18 (3.0 AM & 4.0 PM trips per 1,000sf)	16.95	22.60	-2.04	-2.48	-4	0
SUB-TOTAL STATISTICAL AREA D3			11	49,126		102	119		0	49,126		147	197	45.2	77.8	-11	0
80 Percent Calculation														36.14	62.26	-8.80	0.00
PROPOSED AMENDMENT																	
GENERAL PLAN AMENDMENT NO. GP 2011-009 - STATISTICAL AREA D3																	
514 E. Ocean Front	5,415-square-foot parcel/ (2 legal lots) is fully developed with a two-story mixed-use building with commerical on the ground floor and 5 residential units on second floor	RT	4	0	#230 - Residential/Condominium Townhouse (0.44AM/0.54PM trips per unit)	1.76	2.16	MU-V, allows FAR 0.5 only w/ residential use; if commercial only FAR 0.75 Max	3	2707.5 (@.5) 4061.25 (@.75)	#220 - Apartment (0.51AM/0.62PM trips per unit) & Commercial blended rate per Council Policy A-18 (3.0 AM & 4.0 PM trips per 1,000sf)	1.53+8.12=9.65 or 12.18	1.86 +10.83= 12.69 or 16.25	10.42	14.09	-1	4061.25
TOTAL STATISTICAL AREA D3														46.56	76.35	(9.80)	4,061.25

Correspondence

Item No. 2a

SCAP III, LLC Property Amendment

PA2011-196

RECEIVED BY  
COMMUNITY

JAN 19 2012

DEVELOPMENT  
CITY OF NEWPORT BEACH

Mr. Jaime Murillo, Associate Planner

Dear Mr. Murillo,

This letter is in regard to the Notice of Public Hearing scheduled for January 19, 2012, project file no. PA2011-196.

We are very concerned with the possibility of more or expanded retail space being allowed at the project address. We are owners of a condo directly across the street from this property and are negatively affected by the operation of one of the businesses currently in operation.

I assure you that we are pro business, but when businesses are allowed to operate until 2 or 3 or ??? in the morning, disruption to the residences adjacent to the property is inevitable. Loud, drunk, boisterous, patrons often arrive and leave the business at all hours. Chairs and a table outside the front door and on the public sidewalk encourage congregation further adding to the noise and disruption. Cigar smoke from the business is another huge concern. It is virtually impossible on many days and nights to sit outside or have a window open in our unit without the cigar smoke entering. We are asthmatic and have purchased an air purification system to help with this issue. The possibility of this retail space or another like it to be allowed to lease space or operate without health concern for neighboring residents is worry some.

Parking is another issue. Patrons of the business have illegally parked in spaces clearly marked as permit only for residents of our condominium complex. When this has been brought to the attention of the business owner, altercations have arisen.

We are therefore asking the planning commission to consider very carefully the ramifications of approving this application.

Thank you for your consideration,

George and Cathy Milutinovich

600 E. Oceanfront #3H

Newport Beach, Ca. 92661

559-289-0067



Planning Commission January 19, 2012

**SCAP III, LLC Property Amendments**  
**General Plan Amendment No. GP2011-009**  
**Coastal Land Use Plan Amendment No. LC2011-005**  
**Zoning Code Amendment No. CA2011-012**  
**(PA2011-196)**





**Vicinity Map**



# Site Photos





**General Plan and Coastal Land Use Plan  
Designation: RT/RT-E to MU-V**



**Zoning: R2 to MU-V**